



Senate

General Assembly

File No. 386

February Session, 2014

Substitute Senate Bill No. 373

Senate, April 7, 2014

The Committee on Banks reported through SEN. LEONE of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE UNIFORM COMMERCIAL CODE, THE ELECTRONIC FUND TRANSFER ACT AND THE ISSUANCE OF SUBPOENAS ON A NONPARTY WITNESS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42a-4A-108 of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2014*):

3 [This] (a) Except as provided in subsection (b) of this section, this
4 article does not apply to a funds transfer any part of which is governed
5 by the Electronic Fund Transfer Act, [of 1978 (Title XX, Public Law 95-
6 630, 92 Stat. 3728, 15 USC Section 1693 et seq.)] 15 USC 1693, et seq., as
7 amended from time to time.

8 (b) This article applies to a funds transfer that is a remittance
9 transfer, as defined in the Electronic Fund Transfer Act, 15 USC 1693o-
10 1, as amended from time to time, unless the remittance is an electronic
11 fund transfer, as defined in the Electronic Fund Transfer Act, 15 USC
12 1693a, as amended from time to time.

13 (c) In the event of an inconsistency between an applicable provision
14 of this article and an applicable provision of the Electronic Fund
15 Transfer Act in a funds transfer to which this article applies, the
16 provision of the Electronic Fund Transfer Act shall govern to the extent
17 of the inconsistency.

18 Sec. 2. (NEW) (*Effective October 1, 2014*) (a) Any nonparty witness in
19 a civil action or probate proceeding to whom a subpoena commanding
20 the production of books, papers, documents or tangible things has
21 been directed may, not later than fifteen days after the service of such
22 subpoena or on or before the time specified in the subpoena for
23 compliance, if such time is less than fifteen days after service, serve
24 upon the party who requested issuance of the subpoena a written
25 objection to production, inspection or copying of any or all of such
26 books, papers, documents or tangible things. Such written objection
27 may include a specific objection that the subpoena will cause undue
28 burden and expense to a person who is not a party to the civil action or
29 probate proceeding, provided such written objection shall be
30 accompanied by an affidavit setting forth the estimated or actual costs
31 of compliance with such subpoena. If a nonparty witness makes such a
32 specific objection, the party who requested issuance of the subpoena
33 (1) shall not be entitled to inspect or copy the books, papers,
34 documents or tangible things, or inspect any premises where such
35 materials may be kept, except pursuant to an order of the court in
36 which the civil action or probate proceeding is pending, and (2) may,
37 upon notice to the objecting nonparty witness, file a motion with the
38 court for an order to compel production in accordance with the terms
39 of such subpoena. Any order to compel production with a subpoena
40 pursuant to this section shall protect a nonparty witness from
41 significant expense resulting from compliance with such subpoena and
42 may include, but not be limited to, the reimbursement of the nonparty
43 witness' reasonable attorney's fees and costs related to electronic
44 discovery.

45 (b) The court in which the civil action or probate proceeding is
46 pending, upon motion of the nonparty witness made promptly and in

47 any event at or before the time for compliance specified in the
48 subpoena, may (1) quash or modify the subpoena if it is unreasonable
49 and oppressive or if it seeks the production of books, papers,
50 documents or tangible things that are not material to the civil action or
51 probate proceeding, or (2) condition denial of the motion upon the
52 advancement by the party who requested issuance of the subpoena of
53 the reasonable cost of producing the books, papers, documents or
54 tangible things that such party is seeking.

This act shall take effect as follows and shall amend the following sections:

| | | |
|-----------|-----------------|-------------|
| Section 1 | October 1, 2014 | 42a-4A-108 |
| Sec. 2 | October 1, 2014 | New section |

Statement of Legislative Commissioners:

In the first and third sentences of section 2(a), "issuing" was changed to "who requested issuance of" for the purpose of accuracy; and in section 2(b), "a" before the terms "nonparty" and "subpoena" was changed to "the" for clarity, "materials which" was changed to "books, papers, documents or tangible things that", "issuance of" was added before "the subpoena" and "he" was changed to "such party" for the purpose of consistency.

BA *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill clarifies the interaction of Article 4A of the Uniform Commercial Code and the Electronic Fund Transfer Act of 1978 and results in no fiscal impact to the Department of Banking. The bill also details provisions regarding the issuance of subpoenas on a nonparty witness that have no fiscal impact to the Judicial Department.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 373*****AN ACT CONCERNING THE UNIFORM COMMERCIAL CODE, THE ELECTRONIC FUND TRANSFER ACT AND THE ISSUANCE OF SUBPOENAS ON A NONPARTY WITNESS.*****SUMMARY:**

This bill:

1. provides additional protections for witnesses who are not parties in civil or probate proceedings from incurring significant expenses in responding to a subpoena to produce books, papers, documents, or other things and
2. addresses a gap in the application of state and federal law to remittance transfers (see BACKGROUND) to allow state law to apply whenever federal law does not.

EFFECTIVE DATE: October 1, 2014

SUBPOENAS TO WITNESSES WHO ARE NOT PARTIES

The bill gives additional protections to witnesses who are not parties in civil or probate proceedings and are subpoenaed to produce books, papers, documents, or other things. Existing law contains protections for any witness, whether a party or not, when such a subpoena relates to a deposition. In such cases, the law allows a:

1. person receiving the subpoena to object in writing to producing some or all of the requested items, within 15 days of being served the subpoena but no later than the compliance date specified in the subpoena;
2. requesting party to seek a court order if he or she seeks compliance with the subpoena; and

3. court, until the time specified in the subpoena for compliance, to
 - (a) quash or modify the subpoena if it is unreasonable and oppressive or seeks items that are not material or
 - (b) require the party who issued the subpoena to advance the reasonable cost of producing the material (CGS § 52-148e and Conn. Practice Book § 13-28).

The bill similarly protects nonparty witnesses in civil or probate proceedings when served with a subpoena for documents and tangible things. It contains the same notice and objection provisions as existing law. But it adds protections allowing a nonparty witness to file a specific written objection based on the undue burden and expense of complying with the subpoena. The witness must include with the objection an affidavit on the estimated or actual costs of compliance.

After an objection, the bill allows the party issuing the subpoena to obtain a court order to compel production of the documents. A court order enforcing compliance must protect the witness from significant expense and may require the party issuing the subpoena to reimburse the witness' reasonable attorneys' fees and costs related to electronic discovery. The court also has the options under existing law to quash or modify the subpoena or require the requesting party to advance the witness' costs.

Because existing law applies to subpoenas related to a deposition and the bill appears to do so as well, it is unclear which provisions apply when a subpoena directed to a nonparty relates to a deposition.

REMITTANCE TRANSFERS AND ELECTRONIC FUND TRANSFERS

Currently, state law (Uniform Commercial Code (UCC) Article 4A) generally governs commercial fund transfers unless any part of the transfer is governed by the federal Electronic Fund Transfer Act of 1978 (EFTA). EFTA applies to remittance transfers, which are a type of electronic transfer of funds, but in some circumstances EFTA does not govern all parts of such transfers.

The bill applies state law (specifically UCC Act. 4A) to the remittance transfers unless the remittance transfer is covered by EFTA as an electronic funds transfer. The bill applies EFTA's provisions when there is an inconsistency between state and federal law regarding a fund transfer.

BACKGROUND

Uniform Commercial Code Article 4A

Article 4A of the Uniform Commercial Code governs funds transfers. It establishes the rights and responsibilities of the parties to a funds transfer, including payment obligations among the parties and allocation of risk of loss for unauthorized or improperly executed payment orders. Article 4A was drafted principally to govern fund transfers involving commercial entities (CGS § 42a-4A, et seq.).

EFTA

EFTA (P.L. 95-630) provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. Its primary objective is the protection of individual consumer rights (15 U.S.C. § 1693 et seq.).

Under EFTA, an electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account (15 U.S.C. § 1693a).

Dodd-Frank Act Amendments

The Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-2013) amended EFTA to create new protections for consumers who send remittance transfers, including transfers to designated recipients located in a foreign country.

Remittance Transfers

Federal law defines a remittance transfer as the electronic transfer of

funds, to a designated recipient, that is initiated by a remittance transfer provider at the request of a sender located in any state whether or not the (1) sender holds an account with the remittance transfer provider or (2) remittance transfer is also an electronic fund transfer (15 U.S.C. § 1693o-1)).

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/18/2014)